(1) 93-95

Court, U.S.
FILED
JUN 25 1993
OFFICE OF THE CLERK

No._____

IN THE SUPREME COURT OF THE UNITED STATES

LT/COLONEL CYRUS V. EDWARDS
Petitioner

UNITED STATES OF AMERICA
Respondent

PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
DISTRICT OF COLOMBIA
WASHINGTON, D. C.

PETITION FOR WRIT OF CERTIORARI

For the Petitioner
Lt/Golonel Cyrus V. Edwards
Box 54415
Oklahoma City, Oklahoma 73154
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25 pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether the petitioner, Lt/Colonel Cyrus V. Edwards was deprived of due process of law when the United States District Court of Appeals denied his Petition in Case No. 92-1344, and refused to hear it.

2. Whether the petitioner, Lt/Colonel Cyrus V. Edwards was deprived of due process of law when the United States District Court of Appeals denied his second Petition for a rehearing in Case No 92-1344.

3. Whether the United States District Court of Appeals, Washington, D. C., errored in so stating their reason for denial was, "The case had not gone through the FCC Commissioners".

4. Whether the United States District Court of Appeals errored, and denied Colonel Edwards due process of law, when the Court refused to give any consideration to the second Petition for rehearing, which pointed out to the Court that the case had gone through the FCC Commissioners.

5. Whether the United States District Court of Appeals errored in not upholding United District Court laws laid down for the FCC to follow in granting a new station. Therefore, condoning the FCC to violate those laws in the future at will. Those laws were pointed out to the United States District Court of Appeals in the Petition both times.

6. Whether the petitioner, Lt/Colonel Cyrus V Edwards, was deprived of due process of law by the FCC by the FCC Hearing Judge ignoring the District Court laws laid down for FCC to follow; the FCC Court of Review ignored those laws; the FCC Commissioners ignored those laws; and the United States District Court of Appeals refused to uphold those laws, after Colonel Edwards pointed out those laws to all of them.

7. Whether the petitioner, Lt/Colonel Cyrus V. Edwards, was deprived of due process of law, when he was outright discriminated against in the FCC Hearing.

8. Whether the FCC is going to be permitted to violate the United States District Court laws, laid down for the FCC to follow in granting a new station, and in violating those laws to grant stations not in the best interest of the Public, as they propose to do in the Shawnee, Oklahoma FM Broadcast case.

PARTIES TO THE PROCEEDING

(A) United States District Court of Appeals, District of Columbia, Washington, D. C.

(B) Federal Communication Commission, Washington, D.C.

(C) Lt/Colonel Cyrus V. Edwards, Oklahoma City, OK
FCC Application No. BPH-851024MB.

(D) Bott Communications, of Missouri, FCC Application
No. BPH-851028MG

The case is regarding Applications for an FM Broadcast station construction permit for Shawnee, Oklahoma.

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STATEMENT OF GROUNDS ON WHICH THE JURISDICTION OF U. S. SUPREME COURT IS INVOKED

1. In the case No. 92-1344, before the United States District Court of Appeals, District of Columbia Circuit, the Petition by Lt/Colonel Cyrus V. Edwards was denied. Date stamped on the Order is March 11, 1993.

2. On March 23, 1993, Colonel Edwards filed another Petition requesting a rehearing on the case. And, that Petition was denied by the District Court of Appeals, with date stamped thereon as 13 April 1993.

3. The United States District Court's denial on the two above Petitions totally ignores laws laid down by, and contrary to those laws by another United States District Court, Circuit of New York.

4. This case has strong national interest of the American Public. Laws are laid down for the FCC in granting a new radio station, and those laws are not being followed by the FCC at all Public interest is being ignored, and the FCC is granting station as they wish, regardless of the laws.

5. Since the FCC proposes to grant the Shawnee, Oklahoma FM station to Bott Communications of Missouri, over the superior Application by Colonel Edwards, FCC File No. BPH-851024MB, this comparison will prove above statements:

COMPARISON OF APPLICATIONS

NOMENCLATURE	EDWARDS	BOTT COMMUNICATIONS
Proposed tower height	2,000 ft.	1,408 ft.
Tower approved by FAA?	Yes	No
Tower site contracted for?	Yes	No
Proposed radiated power	100 KW	100 KW
Does the 3.16 Millivolt signal encompass Shawnee, Okla.?	Yes	No
Population in 3.16 MV/M?	274,020.69	Not shown
Homes in 3.16 MV/M?	112,915.16	Not shown
3.16 MV/M Area, Square miles	5,419.74	Not shown
Population in 1.0 MV/M Signal	1,149,838.00	275,000
Homes in 1.0 MV/M Signal	472,882.00	Not shown
1.0 MV/M Area, Square Miles	10,275.32	8,510.00
Population in 50 Microvolt Sig.	3,037,475.00	Not shown
Homes in 50 Microvolt Signal	1, 243, 488 . 20	Not shown
50 Microvolt Area, Square Miles	37,416.87	Not shown
Was Community Survey made?	Yes	No
Does Applicant live within the 1.0 MV/M Signal?	Believes so	No
Does Applicant have business interest in Shawnee, Okla.?	Yes	No

NOMENCLATURE	EDWARDS	BOTT COMMUNICATIONS
Does Applicant have other Broadcast station interest?	No	Yes, many stations and applications Pending with FCC
Has Applicant ever disposed of a FCC Construction Permit?	No	Yes
Are tower spacing requirements met?	Yes	Yes, at original site only
What was FCC closing date on the Shawnee, Okla. case?	15 July 1987	—
Has any Applicant filed any Amendments after that date?	No	Yes, two Engineering Amendments
Has any Applicant proposed a tower site change since closing date on Shawnee, Okla. case?	No	Yes
If so, does new site meet FCC spacing requirements?	No move	No, short spaced towards KWEN of Tulsa, Oklahoma
Length time Applicant has been on Shawnee project?	13 years	6 years
Does Applicant propose to serve full time with the station?	Yes	No
Did Applicant sign and file an Integration Statement with FCC?	Yes	No
Did Applicant propose Auxiliary Power?	Yes	Yes
Did Applicant make Documentation of Population, Homes, and Land Area coverages?	Yes	No

NOMENCLATURE	EDWARDS	BOTT COMMUNICATIONS
Did Applicant conduct an Ascertainment Survey of the Community problems?	Yes	No
Did Applicant prove his funding as required of FCC by U.S. District Court?	Yes	No
Did Judge Miller require proof by Applicant?	Yes	No
Did Applicant have to prove transmitter site Judge Miller?	Yes	No
Did Applicant have to prove FAA tower permit to Judge Miller?	Yes	No
Regarding Population coverage, what is the ratio of Applicants coverage?	4.0	to 1.0
Does Applicant own any other Broadcast station interest?	No	Yes, owns several stations
Does Applicant have any other FCC Applications pending?	No	Yes
In Judge Miller's ruling on 10 December 1991, who did he propose to grant station to?	No	Yes
Did Judge Miller's ruling meet requirements of the U. S. District Court rulings?	(No)	

NOMENCLATURE	EDWARDS	BOTT COMMUNICATION
Is Judge Miller's ruling being Appealed with the FCC Review Court?	Yes, by Edwards	
Did Judge Miller rule towards "Maximum Service to the Public"?	(No)	
Did Judge Miller rule on "Comparative basis" of the Applicants?	(No)	
What did Judge Miller base his ruling on?	(Issues)	
Issues against who?	(Edwards)	
Did Bott Communication have any Issues against them?	(No)	
Were any issues against Bott Communication Petitioned for by Edwards legal counsel?	(Yes)	
How did Judge Miller rule on it?	(Denied it)	
Did Judge Miller ever state during the hearings that based on a Comparative basis Edwards stood to be the winner	(Yes)	
And, did Judge Miller rule in that manner?	(No)	

STATEMENT AND HISTORY OF CASE

Thirteen years (13) ago, I, Colonel Cyrus V Edwards started on the project of getting an FM Broadcasting station for the City of Shawnee, Oklahoma. The community has never had an FM station assigned to it. Colonel Edwards filed for an FM station of 100,000 watts of power, and a tower of 2,000 feet high. This put a strong signal into Shawnee, and over a huge area of Eastern Oklahoma, and covering a population of 3,047,450.00 people, in the primary and secondary coverage areas.

Four applicants filed on top of Colonel Edwards application in an attempt to get the channel that Colonel Edwards had filed for as the first filer.

Over a period of years, the FCC eliminated three of those. One of those eliminated was done so, because his Engineering showed a tiny 1/8" square to represent Shawnee on an Engineering drawing. Yet, retained Bott Communications of Missouri whose Engineering showed Shawnee represented by a tiny 1/8" circle. The Bott Communication's application should have been dismissed along with the rest, due to that reason.

However, the FCC retained the Bott Application, which proposed only a 1,400 foot tower, 100,000 watts of power, and a population coverage of 275,000 people, as compared to Colonel Edwards application covering over 3.0 million people.

Apparently the FCC desired a hearing, and had to retain one application to set up a hearing, against Colonel Edwards far superior application. Each applicant had to pay the FCC a hearing fee, which I believe was $7,640.00.

Colonel Edward's application was an excellent one, meeting all FCC requirements perfectly, and many years had been spent on it. It took three years to get FAA to approve the tower and grant a permit for it; almost two years locating tower sites, and contracting for such. Colonel Edwards, being a Professional Radio Engineer had the Engineering; had funding (took two years to locate funding); tower

site of 360 acres under contract; a tower permit from the FAA for the 2,000 ft. tower; and met all legal requirements.

Bott Communications of Missouri was thrown against Edwards, in the FCC Hearing. Bott Communications of Missouri did not have a tower site; did not have an FAA tower permit; and was never asked one thing regarding their funding.

FCC HEARING

Colonel Edwards was shocked, stunned, and couldn't believe what transpired in the hearing which took almost two years. Although Colonel Edwards application was so far superior, and perfect in every manner, the FCC Hearing Judge entered the Court room and did immediately show bias, by making this statement to the Court, "Colonel Edward's Application is a sham." And, everything from then on, was total outright discrimination towards Colonel Edwards and his application, although it was so vastly superior. Colonel Edwards was forced to prove his funding; prove his tower site; prove his tower permit; prove his Engineering ability.

Whereas, Bott Communications of Missouri was never asked in the Court if they had one single dime to build the station with. We proved in the Court that Bott didn't even have a tower site, and didn't even have a tower permit from FAA. Colonel Edwards asked the Court to place a tower site issue against Botts, but the Court refused and denied the Petition.

Colonel Edwards lost his legal counsel in middle of the hearing, and requested a three day extension for making a filing, which was promptly denied. Each and all requests by Colonel Edwards was denied by the Court.

It was positively the highest of bias and discrimination that one could ever experience in a Court room.

The FCC Hearing Judge came out with his decision and proposed grant the station to Bott Communications of Missouri.

THE FCC REVIEW COURT

Colonel Edwards appealed the case to the FCC Review Court. The FCC Review Court upheld the Judge's decision, and so stated their reason was, "Edward's Petition was eleven pages to long." That was the FCC Review Courts ruling on the case.

THE FCC COMMISSIONERS

The case was then appealed to the FCC Commissioners by filing a Petition with them. The Commissioners sit on the case approximately six or seven months, then one day just picked a phone to the FCC Review Court, and asked the Review Court to make a second ruling on the case and grant it to Botts Co.

District Court of Appeals totally ignored those laws, and refused to uphold them. And, by not upholding those laws the best interest of the public has been disregarded, as well as, it gives the FCC complete lee-way in violating those laws in the future.

U. S. DISTRICT COURT LAWS, FCC IS SUPPOSE TO FOLLOW IN GRANTING A NEW STATION

Reference is made to the UNITED STATES DISTRICT COURT CASE OF NATIONAL BROADCASTING vs UNITED STATES, 47 F. Supp. 940 - 943.

In the above case, the United States District Court held the Federal Communication Commission, in discharge of it's duty, to comply with the following:

(A) Promote the "Public convenience, interest, or necessity"

(B) Must distribute available frequencies so as to give the greatest possible public service.

(C) See that all applicants have the necessary technical ability to build and broadcast programs.

(D) See that stations are properly constructed and properly manned.

(E) See that proposed station does not interfere with other stations.

(F) And, that all licenses are responsible, morally, and financially.

The United States Supreme Court has upheld the above laws at least three times, on the above standards when applied to the construction of stations or to the allocation of frequencies.

(A) Federal Radio Commission vs Nelson Brothers Bond and Mortgage Company, 289 U.S. 266, 2859, 53, S. Ct. 627, 77 L.Ed. 1166, 89 A.L.R. 406.

(B) Federal Communication Commission vs Pottsville Broadcasting Company, 309 U. S. 134, 137, 138, 60 S. Ct . 437, 84 L . Ed . 656 ; (semble)

(C) Panama Refining Company vs Ryan, 293 UO S. 388, 428, 55 S. Ct. 241, 79 L. Ed. 446.

Therefore, the FCC did not comply with the United States District Court laws, as laid down for the FCC to follow.

And, in proposing to grant the Shawnee, Oklahoma FM station to a much lesser applicant (Bott Communications of Missouri) in their:

FCC Memorandum, Opinion and Order Adopted on 13 July 1992, and Released on 22 July 1992, by the FCC Review Court, which so ordered that Colonel Edwards superior application be dismissed, and the lesser application of Bott Communication, Inc. of Missouri be granted.

In doing so, the FCC has done this:

(A) Totally disregarded and violated the U S. District Court laws laid down for them to follow

(B) FCC has shown that they are not granting stations in "Best Interest of the Public".

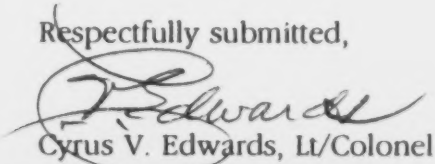
(C) The FCC has plainly ignored everything it has ever stood for in the past, such as local ownership; Diversity of Media; minority ownership; granting stations in Public interest.

PLEADING

For all the foregoing reasons, Colonel Cyrus V. Edwards pleads for the United States Supreme Court to do the following:

(1) Accept this Petition for filing.
(2) Since this Petition is in great public interest, give it great consideration.
(3) Assume full jurisdiction over the case, since all FCC branches of legal departments, as well as, the United States District Court of Appeals have had the case in front of them, and all made no attempt to uphold the U. S. District Court laws regarding granting a new station.
(4) Order the FCC to comply with the District Court laws; order the FCC Memorandum, Opinion, and Order Adopted on 13 July 1992, and Released on 22 July 1992 by the FCC Review Court reversed, and grant the station to Colonel Cyrus V. Edwards, FCC File No. 851024MB.
(5) And, for the FCC to grant the Shawnee, Oklahoma FM station permit in Public interest, convenience, and necessity.

Respectfully submitted,



Cyrus V. Edwards, Lt/Colonel
Broadcast Consulting Radio
Engineer and Investments
FCC/NARTE/SBE Registered

Dated: 18 June 1993.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 92-1344 **September Term, 1992**

Cyrus V. Edwards,
Appellant
v.
Federal Communications Commission

BEFORE: Mikva, Chief Judge; Williams and Sentelle, Circuit Judges

ORDER

Upon consideration of the motion to dismiss, the opporition thereto and the reply, and the reply to the Federal Communications Commission's reply to opposition to motion to dismiss, it is

ORDERED that the reply to the Federal Communications Commission's reply be returned to Edwards. The rules of this Circuit do not permit the filing of a reply to a reply. See D.C. Circuit Handbook of Practice and Internal Procedures 33 (1987). It is

FURTHER ORDERED that the motion to dismiss be granted. An appeal to the Federal Communications Commission from a decision rendered by the Federal Communications Commission's Review Board is a "condition precedent to judicial review." See 47 U.S.C. § 155 (c) (7). Because Edwards has not sought review with the full Commission, this court is without jurisdiction to review Edwards' grievances. See Committee tooSave WEAM v. FCC, 808 F.2d 113, 115-16 (D.C. Cir. 1986) (dismissal of petition warranted where appellant fails to exhaust administrative remedies by seeking review before full Commission of decision of FCC staff).

The Clerk is directed to withold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. See D.C. Cir. Rule 15.

Per Curiam

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 92-1344 **September Term, 1992**

Cyrus V. Edwards,
Appellant

v.

Federal Communications Commission
Appellee

BEFORE: Mikva, Chief Judge; Williams and Sentelle, Circuit Judges

ORDER

Upon consideration of appellant's petition for rehearing, filed March 24, 1993, it is

ORDERED, by the Court, that the petition is denied.

Per Curiam
FOR THE COURT:
RON GARVIN, CLERK

BY:

Robert A. Bonner
Deputy Clerk

Federal Communications Commission
FCC 92R-59

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-168

In re Applications of

LT/COLONEL
CYRUS V. EDWARDS — File No. BPH-851024MB

BOTT
COMMUNICATIONS, INC. — File No. BPH-851028MG

For Construction permit for
New FM Station. Channel 236C.
Shawnee, Oklahoma

MEMORANDUM OPINION AND ORDER

Adopted: July 13, 1992; **Released: July 22, 1992**

By the Review Board: MARINO (Chairman) and GREEN. Board Member BLUMENTHAL absent.

1. The Commission in its Practice and Procedure. 47 CFR § 1.277, has set out with considerable specificity the requirements of briefs and exceptions to initial decisions. By *Memorandum Opinion and Order*, 7 FCC Red 890 (Rev. Bd. 1992), in this case, the Review Board, after repeating those requirements in detail, dismissed the non-complying "Petition for Court Review and Reversal of Ruling," filed January 8, 1992, by Lt/Colonel Cyrus V. Edwards (Edwards), and afforded Edwards an opportunity to refile exceptions in the proper form within ten days of the

release date of the order. Edwards has failed to file a pleading which complies with the requirements of the Commission's rules and policy. We will therefore dismiss his application for failure to prosecute.

BACKGROUND

2. In an *Initial Decision,* 6 FCC Red 7453 (ALJ 1991) *(I.D.),* Administrative Law Judge Walter C. Miller (ALJ) denied Edwards' application for a new FM station at Shawnee, Oklahoma, after disqualifying Edwards on five separate qualifying issues. The ALJ then granted the remaining basically qualified application of Bott Communications, Inc. (Bott). Thereafter, Edwards, who is proceeding without counsel, filed a pleading with the Review Board. By *Memorandum Opinion and Order,* 7 FCC Red 890, the Board dismissed Edwards' pleading because it failed to substantially comply with 47 CFR §1.277. Specifically, the *Order* explicitly noted that Edwards' exceptions substantially exceeded the 25-page limitation; omitted (1) the table of contents, (2) table of citations, (3) a concise statement of the case, (4) a statement of the questions of law presented, and (5) the argument, presenting clearly the points of fact and law relied upon in support of the position taken on each question, with specific reference to the record and all legal or other material relied on. The *Order* also stated that the rule requires that exceptions, including rulings upon motions or objections, shall point out with particularly alleged material errors in the decision or ruling and shall contain specific references to the page or pages of the transcript of hearing, exhibit, or order, if any, on which the exception is based. Edwards was accorded an opportunity to refile his exceptions in the proper form.

3. Rather than comply with the *Order,* however, Edwards filed a letter to the Secretary dated February 4, 1992, announcing his intent to appeal the case to the full Commission. He asserted that he had been allowed inadequate time to refile his exceptions although no extension of time for filing exceptions had been sought. On February 10, 1992, Edwards filed a new pleading with the full Commission entitled Petition for Complete Review of the Shawnee, Oklahoma Case and Reversal of Rulings Made by Judge Walter C. Miller. Thereon, Bott's responsive pleadings filed on January 9 and February 12, 1992, urged the Board to

dismiss Edwards' pleadings or affirm the grant of its application. Bott made no attempt to respond to the merits of the pleadings other than to state they consisted largely of attacks on Bott's application, against which no issues had been specified. Because jurisdiction over the case properly lies with the Board, *see* 47 CFR §0.361 (a), the General counsel's Office informally referred the pleading to the Board on February 24, 1992. *See CSJ Investments, Inc.*, 5 FCC Red 7653, 7655 n.4 (1990) (misdirected pleadings are to be informally referred to the appropriate official who has authority to act on such matters).

DISCUSSION

4. Edwards' latest submission consists of the thirteen page Petition for Complete Review, to which the original non-complying petition dismissed by the Board is appended. In essence, the thirteen page pleading urges the "Commissioners" to read the earlier material submitted to the Board. It does not address the specifics of the purported errors in the I.D., but instead focuses on Edwards' disagreement with the manner in which the ALJ regulated the course of the hearing. Thus, Edwards' pleading continues to exceed and ignore the Commission's page limitation and format for exceptions. *See* 47 CFR § 1.277(c) (The table of contents and table of citations are not counted in the 25 page limit; however, all other contents of and attachments to the brief are counted). Moreover, the failure to point out with particularly the alleged errors in the I.D. impedes any orderly review of the I.D. We have previously held that reviewing authorities have no obligation to sift through the whole record and fashion arguments for the parties. *See Bible Broadcasting Network, Inc.*, 7 FCC Red 432, 433 n.3. Edwards was admonished in the *Hearing Designation Order*, 5 FCC Red 2968, 2970 n.4 (1990) for disregarding the Commission's pleading cycle. The Chief, Audio Services Division, noted that Edwards' derelictions had caused considerable delay and resulted in needless additional time spent by the staff in producing the *Order*. Edwards was further rebuked by the ALJ for deliberately ignoring the ALJ's directions on how to file an acceptable set of proposed findings, and for continually filing unauthorized and untimely pleadings. 6 FCC Red at 7459-7460. And here, he has not

complied with our *Order*. Consequently, we will dismiss Edwards' latest pleading with prejudice for failure to comply with the Commission's rules governing exceptions, and our previous order. *Cf. Vue-Metrics, Inc.*, 69 FCC 2d 1049, 1058 (1978) (application dismissed for failure to comply with ALJ's discovery order); *Capitol city Broadcasting Co.*, 7 FCC Red 2629 (1992) (Commission will not hesitate to summarily deny procedurally defective appeal where circumstances warrant such action).

5. Edwards' prosecution of his application without assistance of counsel does not dictate a contrary result. The Commission has held that where an applicant elects to act without counsel, has the burden of becoming acquainted with and conforming to the Commission's rules and procedures. *See CSJ Investments*, 5 FCC Red at 7654; *see also Silver Beehive Telephone Co.*, 34 FCC 2d 738, 739, 740 (1972). The Commission explicitly warned applicants that it would neither excuse nor tolerate disruptions of its processes because an applicant, which undertakes to act as its own counsel, is unfamiliar with the Commission's rules and procedures. *CSJ Investments, supra*. Finally, the Commission announced in 1986 that it would no longer indulge applicants' temporizing activities. *See Hillebrand Broadcasting, Inc.*, 1 FCC Red 419 (1986). It stated that, in light of a growing interest in new and expanded communications services, it was placing a greater emphasis on its responsibility to provide service to the public in the most efficient, expeditious manner possible, recognizing that delay in the initiation of new service disserves the public interest. *Id*. In sum, Edwards was afforded a second opportunity to file exceptions which complied with the prescribed Commission requirements and failed to do so. We therefore dismiss his non-complying pleading, and his application for failure to prosecute.

6. ACCORDINGLY, IT IS ORDERED, That the Petition for Complete Review of the Shawnee, Oklahoma Case and Reversal of Rulings Made by Judge Walter C. Miller Thereon, filed by Lt/Colonel Cyrus V. Edwards on February 10, 1992 IS DISMISSED, and his application (File No BPH-851024MB) IS DISMISSED for failure to prosecute in accordance with Commission rules; and

7. IT IS FURTHER ORDERED, That petition for leave to amend filed by Bott Communications, Inc. IS GRANTED, and the amendment

IS ACCEPTED; and

8. IT IS FURTHER ORDERED, That the application of Bott Communications, Inc. (File No. BPH-851028MG) for a construction permit for a new FM station at Shawnee, Oklahoma, IS GRANTED.

FEDERAL COMMUNICATIONS COMMUNICATION

Joseph A. Marino
Chairman, Review Board